BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ANGELICA BETANCOURT	)	
Claimant	)	
VS.	)	
	)	Docket No. 204,678
U.S.D. 443	)	
Respondent	)	
AND	)	
	)	
ALLIED MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant requested review of a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated April 24, 1996.

ISSUES

Claimant's request for medical treatment for a low back injury was denied by the Administrative Law Judge as he found that claimant had failed to serve a timely written claim for compensation on the respondent. Timely written claim is the single issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant injured her low back while working for the respondent on November 1, 1993. Respondent voluntarily provided medical treatment for claimant's back injury. Dr. J. Raymundo Villanueva was claimant's last authorized treating physician. Dr. Villanueva last treated claimant on July 15, 1994 when claimant was advised to continue to take her medications and continue to use the TENS unit for her continuing low back pain. Claimant was instructed to return to see Dr. Villanueva in three weeks. However, claimant missed further appointments with Dr. Villanueva on August 5, 1994 and September 16, 1994. Nevertheless, claimant testified she continued to use the TENS unit and take medications prescribed by Dr. Villanueva for her back pain.

Claimant was again injured at work when she fell on September 26, 1994 injuring her left knee and receiving a bump on the back of her head. Claimant was treated at the hospital emergency room on the day of the accident. The next day claimant saw Dr. Villanueva for those injuries. Dr. Villanueva took claimant off work for a few days and prescribed a knee support brace and crutches. The medical records do not indicate claimant had any low back complaints due to this fall. Claimant also testified she did not aggravate her low back problem by the fall. Claimant did not return to Dr. Villanueva for any further treatment for the left knee injury.

Claimant did request that the respondent provide further medical treatment for her low back pain on February 8, 1995. She made this request to respondent's insurance carrier, Allied Mutual Insurance Company, which had workers compensation coverage at the time of claimant's low back injury in November of 1993. In response to that request, Allied Mutual Insurance Company notified the claimant by a letter dated February 23, 1995 that it would no longer provide medical treatment for her low back pain because she had suffered a new injury to her low back in the fall that occurred September 26, 1994.

An employee is required to serve on an employer a written claim for compensation within 200 days after the date of accident or, in cases where compensation payments have been suspended, within 200 days after the date of the last payment of compensation. The furnishing of medical treatment by an employer to an injured employee constitutes the payment of compensation. *See* Larrick v. Hercules Powder Co., 164 Kan. 328, Syl. ¶ 1, 188 P. 2d 639 (1948). In the instant case, the parties stipulated that written claim for compensation was served by the claimant on the respondent on August 23, 1995. Respondent argued that the last medical that was furnished for claimant's low back injury was on July 15, 1994 when claimant saw Dr. Villanueva for her low back injury. Respondent concluded that claimant's claim for compensation is barred because written claim was received more than 200 days following claimant's last medical treatment.

Claimant, on the other hand, contended that Dr. Villanueva remained the authorized treating physician for claimant's low back injury until she was notified by the insurance carrier in the letter dated February 23, 1995 that the insurance carrier would not provide any further treatment. Claimant argued that the 200 days did not begin to run until the respondent notified the claimant that it no longer would provide medical treatment. Therefore, since written claim was served on the respondent on August 23, 1995, less the 200 days from February 23, 1995, the written claim was timely.

The Appeals Board agrees with the arguments of the claimant. The Appeals Board finds that based on the facts and circumstances of this case, the respondent had a positive duty to notify the claimant that it no longer would provide medical treatment for her back injury before it could rely on the 200 day statute. *See* Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 513, 516 P.2d 1008 (1973). Accordingly, the Appeals Board finds in this case the respondent could not rely on the 200 day written claim statute until February 23, 1995 when it notified claimant it no longer would provide treatment for her low back. Therefore, the claimant having filed a written claim for compensation on August 23, 1995, was within the 200 day time period as provided by K.S.A. 44-520a.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated April 24, 1996, is reversed and an order is entered by the Appeals Board finding that the claimant served a timely written claim for compensation on the respondent. The Appeals

Board further orders this case remanded to Administrative Law Judge Jon L. Frobish for appropriate findings based on the evidence contained in the preliminary hearing proceedings in regards to claimant's request for medical treatment.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Jerry Ward, Great Bend, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director